

LEGAL UPDATES

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Suniva Clarifies Petition in U.S. Trade Case on Solar Cells and Panels

On May 12, 2017, Suniva Inc., a U.S. producer of solar cells, filed a supplemental response to its recent petition with the U.S. International Trade Commission (ITC) requesting relief from foreign manufactured crystalline silicon photovoltaic (CSPV) cells and modules. The supplemental response addresses ITC questions about two important issues: (1) Suniva's legal standing to bring the case as representative of the U.S. industry, and (2) clarification of Suniva's position on country of origin for purpose of the case. A review of Suniva's initial filing, based on Section 201 of the Trade Act of 1974, can be found in our previous client alert.

The ITC plainly is concerned about whether Suniva meets the legal requirement that it be representative of an industry. Suniva argues that no set percentage is required and that it has shown sufficient representativeness. While we are not privy to the confidential information that was submitted to the ITC on this issue, we expect the ITC will initiate the case, given that in past Section 201 cases the ITC has not required the overwhelming support of the U.S. industry.

In its petition, Suniva asserts that the cells define the country of origin, regardless of where the modules are produced. That is consistent with both the U.S. Customs and Border Protection (CBP) definition for customs purposes and with the definition being applied in the outstanding antidumping orders on China and Taiwan.

However, the definition is not as straightforward as Suniva may wish. This is neither a dumping case nor a customs case. Additionally, NAFTA provisions make the appropriate country of origin Canada when, for example, a Malaysian cell is processed into a module in Canada, because of the tariff shift from cells to modules. This could result in different remedies for Canada and Mexico, and potentially for other countries with free trade agreements with the

United States. We expect this issue will be contested throughout the proceedings.

The case is now moving forward with additional information, and it appears the ITC will decide in the near future whether to initiate a case.

What This Means to You

Purchasers of cells and modules have the opportunity to get involved and protect their interests. In our experience, the ITC listens carefully in Section 201 cases to the effects on purchasers and their industries regarding both alleged injury and possible remedies. In previous cases, the White House also has been receptive to considering adverse effects on other industries.

The ITC has not yet announced its hearing schedule, but a hearing sometime in late July 2017 seems likely based on schedules for Section 201 cases. Thus, getting organized soon is a key to success for companies and other interested parties that wish to submit their views to the government.

Contact Us

For more information on how this case may affect your business, please contact Jeffrey S. Neeley, a member of Husch Blackwell's International Trade & Supply Chain team, or John Crossley, Jim Goettsch or Cacki Jewart, members of Husch Blackwell's Energy & Natural Resources team.